D.B. Income Tax Appeal No.32/2006

(Commissioner of Income Tax, Udaipur
Vs.
M/s Shree Udaipur Wine Merchant)

Date of Order :: 03.4.2006

HON'BLE MR RAJESH BALIA, J.
HON'BLE MR R.P. VYAS,J.

Mr. K.K.Bissa,for the appellant/s

This appeal is directed against the order of the Income Tax Appellate Tribunal, Jodhpur Bench, Jodhpur dated 20.7.2005, by which the Tribunal has dismissed the Revenue's appeal and affirmed the order of the C.I.T.(Appeals).

The respondent assessee is a holder of retail licence to vend country liquor and IMFL/BEER.

The Assessing officer finding that assessee's sales were not verifiable through vouchers, rejected the books of accounts and assessments were made under Section 145 of the Income Tax Act, 1961, as per best judgment.

The Assessing Officer accepted the gross profit rate of 10.61% in respect of the Country Liquor business as reasonable.

In respect of the business relating to IMFL/BEER the assessee has shown a loss of Rs.84,74,004/-. Since the Assessing Officer has rejected the books of account, he restricted the loss from IMFL/BEER business to Rs.40 lacs only and made an addition of Rs.44,74,004/- in the result shown by the assessee on IMFL/BEER account.

On appeal the CIT (Appeals) found that the Assessing Officer has not referred to any material for arriving at lump-sum figure of loss from IMFL/BEER account to Rs.40 lacs and disallowing the rest of loss claimed by the assessee. It also found that the Assessing Officer has not taken into account Rs.2.81 crores paid by the assessee for not lifting of IMFL/BEER during the previous year relevant to the assessment year, which has resulted in severe loss as it is burden on the total business of the assessee. Similarly CIT (appeals) also referred to other material which has been taken into consideration while considering the profit and loss from country liquor business while considering the case of assessment under IMFL/BEER. On this premise and taking into account, absence of vouchers, the CIT (A) restricted the disallowance of loss to Rs.7 lacs only.

The case of CIT (Appeals) has been affirmed by the Tribunal.

It is in the aforesaid circumstances, this appeal has been filed stating that the substantial questions of law arise for consideration in this appeal.

Learned counsel for the appellant has invited our attention to the bench decision of the case CIT, Udaipur Vs. M/s Sukh Dev Kailash Chandra and Party (IT Appeal No. 65/05) decided on 13.12.2005 which has arisen in like circumstances, wherein the CIT appeal had restricted the loss on account of IMFL/BEER account to much lessor amount than what has been found by the Assessing Officer on the very aforesaid premise.

In the aforesaid circumstances, the finding reached by the CIT appeal and affirmed by the Tribunal being finding of fact does not give rise to any substantial question of law.

Accordingly, the appeal fails and is hereby dismissed.

(R.P.VYAS), J. (RAJESH BALIA),J.

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